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THE HINCHMAN CASE.[1]

BETWEEN two and three years since, we called the attention of our readers to a criminal trial then of recent occurrence in a western state,[2] characterized by the most extraordinary disregard of the rules of evidence, and a complete defiance of those great laws of humanity which are supposed to be recognized in all civilized communities. It resulted in the conviction and execution of a young man clearly and deeply insane, and in overwhelming a respectable family with inconceivable humiliation and sorrow. A case presenting such a remarkable triumph of the baser passions over all the forms and principles of justice, as well as all the instincts of humanity, we regarded as entitled to such notoriety as our pages could give it. We then little thought how soon we should have occasion to place on our record for a similar purpose, another case which differs from that in the single respect, that property and character instead of life are involved in the issue. It was marked by

[1] For the facts in this case we have depended on the report of the Public Ledger newspaper, and a pamphlet called "Speeches of Defendants' Counsel, and the charge of Judge Burnside, in the case of *Hinchman* v. *Richie et al.*, reported by Dyer and Murphy. Phila. 1849."

[2] Trial of Abner Baker, Law Reporter, Dec. 1846.

the same appeals to popular prejudice and ignorance, and the same reckless indifference to the most sacred feelings of the heart, with the additional disregard of every claim to respect presented by lives of usefulness and benevolence. In short, it is one of those cases, happily but few, which appall us by their utter confusion of all moral distinctions, which turn that great blessing, the trial by jury, into a curse, and fill us with apprehension for the future.

On the 12th of March last began, before Judge Burnside, one of the judges of the supreme court of Pennslyvania, sitting at Nisi Prius, in Philadelphia, the trial of the cause of Morgan Hinchman *v.* Samuel S. Richie, Edward Richie, John M. Whitall, George M. Elkinton, John Lippincott, John D. Griscom, Anna W. Hinchman, John L. Kite, Elizabeth R. Shoemaker, Benjamin H. Warder, Philip Garrett, Joshua K. Worthington, Charles Evans, William Biddle, and Thomas Wistar, Jr. The defendants were charged with a malicious conspiracy to confine the plaintiff in the Friends' Asylum for the Insane, near Frankford, Penn., either for the purpose of compelling him to settle his property on his wife and children, or of obtaining it for some one or more of the defendants. It may help the reader to understand the case, to state that the Richies are brothers, one of them a relative of the plaintiff, and took the leading part in the act of arresting him and conveying him to the asylum; that Lippincott, Elkinton, and Whitall assisted in this act; that Kite, who is a physician, gave a certificate of insanity; that Elizabeth R. Shoemaker is his wife's sister, and A. W. Hinchman, his own sister, both being charged with abetting in some way in the conspiracy; that Griscom was the plaintiff's family physician, and advised him to go quietly; that Wistar was charged with having some connection with the sale of plaintiff's property; that Warder is one of the managers of the asylum, and gave the order of admission; that Biddle is charged with being corruptly placed on the sheriff's jury that tried the question of his insanity after he was placed in the asylum; that Evans was the visiting, and Worthington the resident physician, and Garret the steward, of the asylum. The jury found a verdict against the first seven just named, and assessed the damages at $10.000. The rest were acquitted, Evans at the close of the plaintiff's evidence.

It appears that the plaintiff had been for three or four years previous to this event, a farmer in the neighborhood of Philadelphia, prior to which he had been a teller in a bank. In 1839 he married Miss Shoemaker, a woman of exemplary worth and respectable connections, and a member like himself and their families, of the Society of Friends. They were equal in point of property, the wife's being settled upon her by him, but with a power of revocation which she subsequently used at his request, and for his benefit. It was testified by Hinchman's mother, whose character as a careful, intelligent, and affectionate parent was placed beyond the reach of doubt, — and her testimony in every essential respect was corroborated by that of many others, — that soon after his marriage, his conduct often became so strange and unnatural as to raise the suspicion of insanity; that this suspicion was finally turned into positive belief, and that she and his wife came to the conclusion that the discipline of an asylum was necessary in order to arrest the farther progress of the disease, and restore his mental health. To aid them in effecting this measure, they applied to the Richies, one of whom was a relative of the family, and with both of whom they as well as the plaintiff had been in habits of frequent and familiar intercourse. They met him at a tavern, disclosed their intentions, and forthwith carried him to the asylum, 7th of January, 1847. Soon after, a commission of lunacy was issued, which found him insane for some months previous. After a residence of six months he was discharged as recovered, but has not lived with his family, and has been chiefly occupied in preparing this suit.

In the present suit the defendants rested their defence on the plaintiff's insanity of which they presented uncommonly clear and abundant evidence, although prevented from calling those who were most capable of furnishing it. The persons who had always been on the footing of a familiar acquaintance with Hinchman and his family, who had known him intimately from his childhood, and marked every phase of his mental condition, who had been made acquainted with every incident of his domestic life, and been his confidential friends and advisers, they were made parties instead of witnesses in the case — many of them, apparently for no other reason than to shut their mouths. True, there was one not included in the band of con-

spirators, who might have unfolded a tale of moodiness and excitement, of attempts at suicide, of frequent unkindness and annoyance towards those most entitled to his regard, but it was not for her to lay bare to the public gaze, the privacies of her domestic hours. The witnesses who did testify to his insanity, seem to have labored under the usual difficulty — that of conveying to others the strong and well-grounded convictions of their own minds. Where the disease is evinced in gross delusions it is comparatively easy for one to describe them with clearness and precision, and thus give an intelligible reason for his belief. But where the disease is chiefly manifested in the conduct or disposition, appearing in acts unseasonable or inappropriate to the circumstances of the patient, in moods and freaks not incompatible with sanity, perhaps, but quite foreign to his natural character, then the witness is naturally embarrassed in endeavoring to convey to others an impression which is more like that produced by a picture than an actual occurrence. His opinion is founded upon a general view of the life and character of the person for the period under consideration. On the witness-stand he finds that this view is to be analyzed, and each particular, in itself alone no proof of unsoundness, is to be subjected to the unrelenting scrutiny of court and counsel. They are satisfied only with manifestations which in and of themselves, independent of all others, are unequivocal proofs of mental unsoundness. How little of insanity is manifested in this manner is well known to those practically acquainted with the disease, but by most others it is supposed to be always associated with gross delusions, or acts of ungovernable fury and frenzy. Still, the evidence was sufficient, we should imagine, to satisfy any unprejudiced mind that Hinchman was unequivocally insane ; and that his friends were perfectly justified by the kind and degree of his malady, in placing him in an asylum, whether for curative or merely custodial purposes. Of course our limits will scarcely permit us to give more than a general summary of its most important parts.

The mother of Hinchman testified that soon after his marriage she observed a change in his temper and demeanor, that showed itself in turns of moodiness and dejection, in rudeness and ill-nature, in inconsiderate and unkind treatment of others, and appeared with more or less frequency up to the time of his

going to the asylum. Several specific instances were related of rude and unfeeling treatment which she received from him when visiting his family, although from his childhood upward he had ever evinced a kind and affectionate disposition. Many witnesses bore testimony to similar freaks and caprices of temper during the period in question, and among them were mentioned repeated instances of the most heartless disregard of the feelings of his wife, of his mother, and his sisters. The mental disturbance was sometimes so great that he abandoned himself to acts that bore the impress of madness on their very face. One witness found him kneeling on the floor, sighing and groaning, then rolling himself over the floor, and finally breaking away and running into the street. In 1844 he severely whipped a child he happened to meet in the street, but whom he did not even know, for the reason, as he afterwards told the father, that he feared he would hurt the other little boy with whom he was playing, and then asked the father's forgiveness. More than once he stripped himself stark naked in his kitchen in the presence of a female domestic, in order to bathe. In 1844 he became a defaulter to the bank of which he was teller, and in informing his mother and wife of the fact, he added that it was revealed to him that if he did not stand up in meeting and confess his sin, his first-born child would be taken from him. Once having invited some ladies into his carriage, he drove through the streets with a young, unbroken horse, much to their astonishment and fright. After selling a couple of pigs he insisted that one was bigger than the other, and worth just two cents more, which the buyer paid.

Coming down to the period near that of his removal to the asylum, a witness stated that he came to her house in December, 1846, to sell them some pork, saying that he had killed a pig on purpose for them, though they had not engaged any. He talked fast and wildly upon a variety of subjects, no one else speaking. To another in the same month he insisted on selling two pounds of butter, for the purpose of raising a thousand dollars; and said if he did not take the butter, he (the witness) must find him (Hinchman) a purchaser for his Marshall Street property. He left on the minds of witness and wife a strong impression of his derangement. Three witnesses stated that he came into the monthly meeting on the 4th of January, 1847,

and spoke several times, incoherently and unintelligibly, so that they could not tell which side he was on. He was not dressed like a Friend, his face was flushed, and he had a wild look. Another stated that the day before Hinchman was taken to the asylum, he came to her father's house, where he was not in the habit of visiting, and dined with them; that while at table he went into a long conversation about his property and his money; that he poured out his money upon the table and counted it over, telling them that Judge Fox had promised to get money for him but could not do it, because people said that he (Hinchman) was crazy. He left the impression upon her and the family that he was deranged. Two others testified, that on the same day he came to their house and behaved in such an unusual and extraordinary manner, that they concluded he must be insane. Hinchman's mother testified that she concluded from his wife's statements, that he was getting worse, that he had no intervals between his turns of excitement, that he complained much of his head, and that his memory was leaving him. Dr. Griscom, his physician and friend, who knew him intimately, advised him to accede to the wishes of his family, and go to the asylum. Dr. Evans, the physician of the institution, testified that he found him laboring under some functional derangement of the digestive organs, accompanied by delusions. He imagined that he had syphilis, and although told that he had no such disease, and he admitted that he not been exposed to it, yet he still persisted in the notion. He assured the doctor that his wife, mother, and sister-in-law, were entirely deranged, (a delusion he had manifested previous to his admission into the asylum,) and once expressed his belief that he was placed in the asylum as a punishment for taking the money from the bank, as already related. Shortly before leaving, he said he was sensible that when he entered the asylum his mind was not right, but that then he was relieved. The witness also stated his belief that Hinchman's disease was more likely to be cured by the discipline of an asylum than by any other measure. It may also be mentioned in this connection that two of his fellow-clerks in the bank to which he was a defaulter, and one of its directors, expressed their belief at the time, that he was insane when he took the money. A committee of the Friends' meeting to which he belonged, to whom was referred

the subject of his treatment of his mother, reported that he was insane, and on that ground ought not to be disowned.

To meet such evidence as this the plaintiff produced some sixty or seventy witnesses, who testified substantially that they never saw or knew him to be otherwise than sane. Their means of observation were occasional interviews in the streets, in meetings of a horse-company, and petty business transactions. Few of them were ever in his house, and not one was an intimate acquaintance. Their testimony was merely negative, and did not invalidate a particle of the evidence presented on the other side. Similar testimony might be given respecting the majority of insane men. It was not pretended that Hinchman was habitually deranged during the whole period in question of seven or eight years. His mother expressly says, that at times he appeared like himself, and she as well as others described his disorder as manifesting itself in "spells," or "turns," in the intervals of which, of course, he behaved with his natural correctness and propriety. It was to be expected, therefore, that to the most of those who saw him but seldom, and were comparative strangers to him, he would exhibit no symptoms of mental derangement.

The motive of the conspiracy, as set forth in the declaration, was either to compel Hinchman to settle his property on his wife and children, or obtain it for some one or more of the defendants. Now, in regard to the latter, there does not appear to be one tittle of evidence in support of this charge, nor indeed could there be. In no event could any of the defendants be benefited by his property, except his own and his wife's sister, and they could only upon the contingency of the death of Hinchman, of his wife, and of his children, and this contingency was brought no nearer by his being placed in an asylum. Indeed, the plaintiff's counsel scarcely attempted to prove this charge. They mainly endeavored to convey the impression that the object of the conspiracy was to change the control of the property from his hands to his wife's. That it was placed in charge of a commission, was a necessary consequence of his being insane and in an asylum, but this was not sufficient for their purpose. They attempted to show that the defendants made his liberation from the asylum contingent upon his conveying his property to his wife, by giving her a deed of trust.

The only proof they offered, was the testimony of some of the attendants of the asylum, which was substantially that, in passing along, they heard, or thought they heard, Dr. Worthington and Mr. Garrett, while in conversation with Hinchman or his friends, say something about a deed of trust. That is, a man declared to be insane by a jury of inquest, and whose property is placed in charge of a commission, is solicited to execute a deed of trust of that property! Were his counsel serious in making this point, or did they suppose that the defendants were fools as well as knaves? The facts really established by the evidence in regard to the management of his property by others, were, that on the discharge of the commission, his real estate was restored to him just as he left it, and his personal property accounted for to him within two hundred dollars of his own estimate, a number of debts having been paid, his family supported, and an execution advantageously satisfied by the good offices of Edward Richie.

It was also suggested by Hinchman's counsel, that another motive that induced his mother to procure his removal to an asylum, was to gratify her revenge for some rude treatment she received from him a year or two before. Not a particle of evidence is offered of the fact, while, on the other hand, several ladies of the highest respectability, who had been intimately acquainted with her from her youth, testified, in the strongest manner, in favor of her character as a kind and affectionate mother. If the counsel possessed any proof of such an object, we cannot but wonder that she was not placed upon the roll of defendants. That they should have made the insinuation without proof, stabbing a defenceless woman in the dark, was probably one of those innocent liberties which are supposed to be compatible with professional honor and dignity. Taking this view of the case, they were obliged to change the part previously assigned to the wife on the theory that the object of Hinchman's imprisonment was to throw the control of the property into her hands, and accordingly the senior counsel declared that "she was imposed upon, and had no hand in it." In regard to this position, we need only repeat the remark of the court upon it, that we can see no foundation for it in the evidence. There seems to be no end to the puzzles and contradictions presented by this most extraordinary trial, but our limits will confine our notice to one more only.

On the close of the plaintiff's evidence, it was moved that Dr. Griscom, Miss Hinchman, Dr. Evans, and Messrs. Warder and Wistar, should be acquitted, no evidence appearing against them. The court advised the acquittal of Evans and Hinchman, but the jury acquitted only the former. This gentleman is the visiting physician of the asylum, in which capacity he makes himself acquainted with the mental condition of the patients, prescribes their medical and much of their moral treatment, and decides when they have recovered. It is for him to say whether the patient is or is not insane, and by his opinion the managers are guided in settling the question of the patient's discharge, or further detention. He it was who decided the fate of Morgan Hinchman for six months and more; who pronounced him insane, treated him as an insane man, and finally discharged him as recovered from the disorder. If any wrong was committed upon this man, Dr. Evans was unquestionably the principal offender. The others merely conceived and initiated the wrong, while he consummated and continued it month after month. All their efforts to gratify the unnatural passion of the mother, or strip him of his property for their own or his wife's benefit, would have been powerless without his coöperation. If Hinchman were really not insane, who was more deeply responsible for his confinement than Dr. Evans? If, on the other hand, he were insane — and the acquittal of Dr. Evans was tantamount to the admission of the fact — wherein consists the guilt of those defendants who conveyed him to the asylum? If Dr. Evans were correct in his opinion of Hinchman's insanity, and consequently entitled to an acquittal, why should Dr. Kite have been punished, who had no other connection with the case, than to give a certificate of insanity?

If we are to receive the construction put upon the law by the court, namely, that "a conspiracy to do a lawful act, if for an unlawful end, is indictable," then perhaps the innocence of some of the defendants would not necessarily follow the admission of Hinchman's insanity. That is, although they might lawfully carry him to the asylum on account of his insanity, yet, if they were to be benefited thereby in a pecuniary respect, then it would be an unlawful act, whether he were sane or insane. However much this construction might affect the Richies and some others, we cannot see how it could bring Lippincott into the

conspiracy. He was on his way to the coach-office, in order to take a seat for Frankford where his daughter was ill, when he was met by some of the defendants who told him they were about to take Hinchman to the asylum, and invited him to take a seat in their carriage. There is no proof that he had the slightest reason to suppose that they had any other object than the ostensible one — an act of humanity. And even if he had, it does not appear that he laid a finger upon Hinchman.

Notwithstanding the great pains taken by the plaintiff's counsel to give a strong coloring of guilt to this transaction, and the vindictive character of the verdict, we can see in it no unusual features, no suspicious circumstances. It was a reasonable, an honest, an humane measure, deliberately and conscientiously planned, and judiciously carried out. For several years a gentleman has been regarded by his family, and many of his relatives, friends, and neighbors, as subject to occasional derangement. He purloins money, and the act is attributed to insanity. He offers violence to his mother, and the meeting to which he belongs forbears to deal with him, because he was insane. He disturbs the peace and comfort of his family, but the partner of his joys and sorrows bears and forbears, hoping that his malady will finally yield, and every "spell" will be the last. Finding their hopes disappointed, and the disease steadily gaining strength, the wife and the mother, after deliberately consulting with their and his friends and relatives, finally resolve to place him in one of those institutions which are supposed to possess peculiar facilities for restoring the health of the disordered mind. To carry this measure into effect, they solicit the good offices of a couple of gentlemen, one a relative, and both his tried and faithful friends, and they, like good friends and neighbors as they are, perform the unpleasant duty. A petition is immediately offered for a commission of lunacy, and a jury of inquest find him insane. All the privileges and indulgences at the command of one of the most excellent establishments in our country, are afforded him so far as they are found compatible with his condition and comfort. He corresponds with his friends and receives their visits. Under this wholesome discipline, his mental health improves, and after a few months, without the slightest objection from any one, he is discharged as restored to his usual health. Now, in this whole history we

cannot discover a single strange or unusual feature, — not a single mark of fraud, or malice, or unfairness. To discover in it such qualities, required feelings perverted and imbittered by disease, a public sentiment poisoned by the machinations of artful and unscrupulous men, and a jury with imaginations inflamed by pictures of a worthy and harmless man seized at mid-day by a band of ruffians, torn from the embraces of his wife and children, immured in a prison worse than the Bastile, denied the sight of his friends, stripped of his property, and in daily peril of his life from the assaults of raving maniacs.

In another and a very important point, this case is not without a frequent parallel. We are satisfied that Hinchman belongs to a class of patients — not a small one by any means — who recover so far as to be able to resume their customary pursuits and to conduct with tolerable correctness, but never obtain a healthy tone of thought or feeling on the subject of their infirmity. Instead of manifesting any gratitude towards those who watched over and cared for them when unable to care for themselves, and conducted them safely from under the cloud that enshrouded their minds, they regard them as having committed a grievous wrong in every step of their management. They are unwilling to admit that their intellect has been obscured for a moment, and this kind of pride, joined with a certain moral obliquity attributable to disease, makes them burn with hate and hostility towards every one who had any agency in effecting their seclusion — the very partner of their bosom, as well as the institution under whose restorative influences reason has regained some measure of her lost dominion. Such feelings have only to be artfully stimulated and managed by mischievous acquaintances, to find vent in law-suits and criminal prosecutions.

The court, we are glad to see, afforded no countenance to a notion of the plaintiff's counsel, that a person could not be deprived of his liberty, even on account of insanity, without a trial by his peers; and distinctly approved of the doctrine laid down, and settled, we trust, for all coming time, by chief justice Shaw of this state,[1] that the right to restrain an insane man of his liberty, is to be found in the "great law of humanity."

[1] Law Reporter, viii. 122.

Subsequently, however, the right is so often affirmed by the court in connection with some condition or qualification, that we are left in a little doubt as to the exact principle which it would affirm. "If," it says, "Morgan Hinchman was placed in this asylum for the mercenary purpose of getting him to convey his property in any way, it was a foul conspiracy; if it was honestly and conscientiously done for the purpose of restoring him to health, they conscientiously believing him to be diseased, and you should be of that opinion, it presents a case in which, as I have told you, the patients may be taken in charge by relations and friends, by wives and by mothers." This is very plain, but how are we to understand the following remark. "If you are satisfied that Morgan Hinchman was so partially insane, that it was dangerous to himself, dangerous to his wife, and dangerous to his children, for him to be at liberty, and that these men acted from pure motives, and placed him in the asylum for the purpose of restoring him to health — restoring him sound to his family, I hold them justified." Again, one of the points offered by the defendants is, "that if they acted under circumstances such as would have induced a man of ordinary intelligence to believe the plaintiff insane, and requiring medical treatment in an asylum, the plaintiff cannot recover." To this the court answers, "I accede to this if the jury find it was their only motive to restore him in health and soundness to his family." By this language it seems to be implied that the insanity of a party will not necessarily justify another in placing him in an asylum; because the motive of the former *may* be bad. To extend to an insane man the benefits which an asylum affords, is usually supposed to be a sufficient and justifiable reason for placing him in one. If in the deep recesses of the heart there lurks a mercenary feeling — a consciousness of benefit to be derived, some day or other, from this measure so salutary to another, we respectfully submit to the common sense of our readers, whether such a sentiment can be made a subject of judicial inquiry. We cannot learn from the judge's charge, on which side the burden of proof respecting the character of the motive is to rest. This would seem to be an important point. The practical consequence of this doctrine of the court, if confirmed, would be, to deter the relatives of a patient from taking measures for his seclusion, because it may result in their

pecuniary benefit, and thereby subject them to the charge of being actuated by mercenary motives. While they keep aloof, no one else will interfere, and the unfortunate patient is left to his own courses, until his disorder has become incurable, and seclusion is rendered a measure rather custodial than curative. Such a result the court certainly could not contemplate with favor, and it is to be regretted that the opportunity was not taken to rebuke, in the strongest manner, that jealous, intermeddling spirit that, with the most imperfect knowledge of the facts and no personal interest whatever in the matter, presumed to condemn the most salutary measures, and to poison by its machinations the very fountains of justice. This notion of improper motives pervades the charge of the judge, starting up before him at every turn, like a troubled ghost, and frightening him from every position that common sense and common justice invite him to take.

The defendants declare that the finding of the inquest, "that the plaintiff was insane, is a justification of the arrest and confinement, so long as it is necessary for the health and improvement of the party." The judge replies substantially that this position is correct, provided there were no corrupt, nor fraudulent contrivances in the proceeding. It had been testified by one of the plaintiff's witnesses, that Edward Richie told him that he (Richie) and Biddle handed to the sheriff a list of jurors for the inquest of lunacy, who were accordingly summoned. This fact was flatly denied by the sheriff who emphatically declared that every member of that jury was selected by himself, without the slightest suggestion from any one else. The acquittal of Biddle shows that the jury chose to believe the sheriff, and consequently, there having been no fraud, the finding of the inquest, upon the above admission of the court, was a justification of the arrest and imprisonment. With what consistency, then, could the jury render a verdict against Elkinton, Lippincott, and Whitall who had no other connection with the case than to assist in such arrest? We are almost forced to the conclusion, by this and other similar inconsistencies, that some victims were deemed necessary to appease the wounded pride and morbid feelings of the plaintiff, and the jury were guided in their selection by any other consideration than guilt.

Our limits will prevent us from adverting to every objection-

able feature presented by this case. A volume would scarcely suffice for that, but the specimens given will enlighten the reader respecting its general character, and especially of the animus that pervaded the trial. It is perfectly obvious, that by artful appeals to the popular passions through the newspaper press, the defendants had been tried and condemned in the public mind long before they went through the formalities of a legal trial. This explains why it was that a band of men and women, than whom our sister city has few more eminent examples of moral integrity and worth, were arraigned like felons, held up to the scorn and contumely of the world, and stripped of their property as a punishment of their crimes. But we are not anxious to prolong an examination which, the further it goes, only deepens our mortification and grief. Thus much we felt bound to say, in our character of faithful journalists, of a trial which can scarcely find its parallel, except in the trials for treason that disgraced the reigns of the Stuarts.

> "Can such things be,
> And overcome us like a summer's cloud,
> Without our special wonder?"

We would take the opportunity, before closing this notice, of adverting to a subject that has become somewhat important at the present time. Although Hinchman's disorder was not distinctly declared by any of the medical witnesses, so far as we can learn, to be moral insanity, yet the phrase was used by the defendants' counsel, and gave rise, as it always does, to considerable discussion. The term itself has been recently introduced, for the purpose of distinguishing a class of cases in which the mental disorder is chiefly, if not wholly, confined to the moral affections. For scientific purposes it is conducive to convenience and to precision of meaning, and its correctness is universally recognized by those who have been much conversant with mental disease. Some of the reproach which it is fashionable to cast upon medical men for employing it, would probably have been spared, had it been considered that this form of insanity is no discovery of the present day, but was observed and described by some of the highest authorities of the last century. It is not the thing, but the name only that is new. There is a prejudice, however, against the name, that is far from being confined to ignorant and illiterate people. It is supposed

to confound the distinctions between depravity and disease, and to yield a misplaced indulgence to vicious propensities and habits. Lawyers jeer at it; judges shake their heads when it is named, as if to intimate that their season of verdancy had passed; the public press pours out upon it its choicest venom; and by one and all, the doctors who utter the unfortunate phrase, are regarded as but little better than the culprits for whose benefit they have conjured it up. It is foolish to fly in the face of a prejudice so extensive and deeply-rooted as this. It is useless to say that the obnoxious phrase expresses a scientific fact well observed and authenticated, and consequently can be denied with as little propriety as the prismatic division of the solar ray. The term is not indispensable to a clear expression of our belief in the existence of insanity in whatever shape it may appear. It is enough for the medical jurist to say, that, in his opinion, the party is insane. The law requires no definitions nor classifications. It is his own fault, if he allow himself to be embarrassed by a phrase that is sure to be turned against him, and counsel would better serve the cause of their client, if they abstained from encumbering with an obnoxious adjunct, a plea which, at the very best, is regarded with distrust and suspicion.

Recent American Decisions.

District Court of the United States, District of Massachusetts. March, 1849.

The Ferax.

Joseph Gould, Libellant, *Thacher & Sears*, Claimants.

The lien in favor of material men created by the law of Massachusetts, (St. 1848, ch. 290,) extends to alterations of vessels as well as to other repairs.

By a contract for a sale of a vessel and a payment therefor by instalments, it was provided that in case of failure to complete the payments before a certain date, (May 1st,) the previous payments should be forfeited, and the title revest in the vendors; but that after the first payment, the vendee should have possession with liberty "to make such repairs, as he may wish, to load the ship, or secure passen-

gers for her, provided nothing is done to injure the vessel." After the first payment and before the 1st of May, certain alterations were made by the vendee, though, having failed to complete his payments, the vessel was subsequently forfeited. *Semble*, that if the material men were ignorant of such contract, the vendee had full authority to bind the ship by a maritime lien for such alterations.

THE claimants, Thacher & Sears, were owners of the Ferax, and in January last made a written contract with Anthony Brackett, therein agreeing to sell him said ship, to be paid for by instalments. The contract further provided that in case of failure to complete the payments before May 1st, the previous payments should be forfeited, and the title revert to the claimants, but that after the first payment, Mr. Brackett should take possession of the ship, with liberty to "make such repairs as he may wish to load the ship or secure passengers for her, provided nothing is done to injure the vessel." The first instalment was paid, and the vessel delivered into Mr. Brackett's possession, who immediately advertised her for a California voyage, and fitted her up with accommodations for passengers in the steerage. For this purpose he employed the libellant, who worked on board about a fortnight, putting up berths, bulkheads, tables, &c., and setting a number of deck lights in the deck, for the state-rooms. Mr. Brackett failing to make his payment of May 1st, the vessel reverted to the claimants, who altered her destination and removed the work of the libellant, sending the vessel on a freighting voyage. The libellant, not succeeding in getting his pay of Mr. Brackett, brought this libel to enforce his lien under the Statute of Massachusetts, 1848, ch. 290. The statute provides as follows: "Whenever a debt is contracted for labor performed, or materials used in the construction or repair of, or for provisions and stores or other articles furnished for, or on account of, any ship or vessel within this commonwealth, such debt shall be a lien upon such ship or vessel, her tackle, apparel, and furniture, and shall be preferred to all other liens thereon except mariners' wages."

It appeared that the libellant knew nothing of the contract between Mr. Brackett and the claimants; that the vessel, while these alterations were in progress, lay at the wharf on which the claimants' counting-room stood; and that the counting-rooms of Mr. Brackett and of the claimants were within two doors of one another. It was admitted that the libellant's charges were

reasonable, and that the work done was proper and suitable for a vessel bound on a long voyage with numerous passengers, but unsuitable for freighting purposes.

JUDGE SPRAGUE, in delivering his opinion, remarked substantially as follows: This is an important question. It depends mainly on the meaning of the term "construction" in the statute; for the libellant's work, being in the nature of alteration, cannot well be treated as "repair," which is restoration. The statute is recent, and the word has been the subject of no legal determination. We must look to the intention of the legislature. The reason of the statute would make it apply to alterations and reconstructions, as well as to the original construction; and if the latter only had been intended, the word "building" would seem to have been more natural. Suppose a vessel is changed from a brig into a bark, or internal alterations made to fit a merchantman for a whaleman; or suppose a vessel to be coppered for the first time, on a change of her destination; the reason of the act would apply to these changes as much as to repairs or to the original building. It is not desirable, on practical subjects and among practical men, to create nice distinctions, where there is no distinction in the reason of the statute.

The next point made by the claimants is, that Mr. Brackett had not such authority over the ship as to bind her by this lien. By his contract he is the purchaser, under certain conditions; is to have possession and control, to engage passengers and make repairs, provided he does not injure the vessel. No personal liability of the claimants is here contended for, but only a lien *in rem*. The term "injure" must mean something which makes the vessel less valuable to the owners. The true meaning of the contract is, that Mr. Brackett may fit the vessel for such purpose as he shall destine her for, making the appropriate changes, with a guard against waste, or such alteration as would diminish the value of the vessel. But, beyond all this, the libellant made his contract with a person placed by the claimants in possession and apparent ownership of the vessel, the alterations he made were proper for the projected voyage, nautical in their character, and he acted in good faith, and in ignorance of any contract between the parties.

But supposing that, by the contract between Mr. Brackett and the claimants, the latter had the right to interfere to prevent the alterations being made. They did not interfere. From the circumstances proved, the advertisements, the situation of the vessel and the counting-rooms, the reference to passengers in the contract, and the great remaining interest the claimants had in the vessel, I should, if the case depended on this point, require strong evidence to contradict the violent improbability of their being either ignorant or dissatisfied with what was going on. It is not necessary to decide what would have been the effect in case they had given the libellant notice.

Decree for the amount of the libellant's bill, $233.87, and costs.

R. H. Dana, Jr., for the libellant.
Ch. T. Russell, for the claimants.

Recent English Decisions.

Court of Common Pleas.—Sittings in Banco.

KIMERSLEY *v.* KNOTT.

A declaration against the indorser of a bill of exchange, in which the defendant is styled simply "James M. Knott," is bad, because the Christian name of the defendant is not properly set forth under stat. 4 William IV., ch. 42.

IN this case the plaintiff, as indorser of a bill of exchange of £65 10 s., brought an action against the defendant as the acceptor, and declared against him by the name of "John M. Knott," being that by which he had signed the note, but without stating in the declaration that the defendant had so signed it. To this declaration the defendant demurred specially, and assigned as the ground of his demurrer, that the declaration had not properly set forth his Christian name, nor assigned any reason under the statute, 3d and 4th Wm. IV. c. 42, for not doing so.

Mr. Sergeant Talfourd, on behalf of the defendant, said their lordships were often told that a case rested on a word, but here, it rested on a letter only. It was his duty to contend, both upon principle and precedent, that this was a good ground of demurrer. The court had decided that the letter "I," being a vowel, and capable of pronunciation, might be taken to be a Christian name, but they had at the same time intimated, that such would not be the case with a consonant, which, as it could not be sounded alone, would be deemed to be not a name but an initial letter only. Now, in this case, "M" was plainly an initial letter, for it could not be pronounced by itself. Standing by itself, therefore, it meant nothing. He was sure a very eminent authoress, (Miss Edgeworth,) whose loss they had recently had to lament, was of opinion, that all the letters of the alphabet, by the mode in which they were explained, were rendered little more (to use judicial language) than a "mockery, a delusion, and a snare," — that A B C D, &c., meant A B C D, &c., and nothing more; but even if it would avail him, he feared his friend could not rely upon such authority.

The Lord Chief Justice: You say the "M" means nothing — then let it mean nothing. Would a scratch be demurrable?

Mr. Sergeant Talfourd: I say that "M," by itself, cannot be pronounced, and means nothing; but here it does mean something, which something ought to have been stated or explained under the statute. Suppose a person of the name of John Robbins, the court would surely hold a declaration bad, which described him by the word John and figures of the red-breast! In like manner the court would hold this declaration bad, because it either put a sign for one of the defendant's names, or described it by the initial letter. A consonant by itself was a mere sound without meaning. The letter H, indeed, by the custom of London and some other places, was no sound at all [laughter,] though elsewhere it often protruded itself on all occasions, [renewed laughter.]

Mr. Justice Maule: I had a policeman before me as a witness the other day, who told me he belonged to the "hen" division, and it was not until some farther stage in the cause, that I discovered it was not a division designated by the name of a bird, but by "N," the alphabetical letter. [Great laughter.]

Mr. Sergeant Talfourd: It will probably be contended that this person might have been christened in the manner the bill is signed, but I submit that the court will not intend that. It is true we often hear of absurd Christian names, and I myself remember when many persons insisted upon having their children christened "Sir Francis Burdett."

Mr. Justice Maule: I remember a very learned and ingenious argument by Mr. Jardine when I sat in the court of exchequer, by which he proved to the satisfaction of the court, that the Christian name is the real name, and the surname is only an addition; that in the case of John Stiles for instance, John is the real name, but Stiles was perhaps originally added only because the ancestor lived near one.

Mr. Sergeant Talfourd: Then having, I hope, convinced the court that "M" by itself cannot be a name, and means nothing, I submit it must be understood as an initial, and therefore that it ought to have been so stated.

Mr. Justice Maule: Pleadings are in writing, therefore the law presumes that the court can read and know its letters. Vowels may be names, and in "Sully's Memoirs" a Monsieur D'O. is spoken of; but consonants cannot be names alone, as they require in pronunciation the aid of vowels.

Mr. Sergeant Talfourd: Yes, but in the case of consonants, they are taken to be but initials, when used alone both in law and in literature. Throughout the ponderous volumes of Richardson's novels for instance, we find persons spoken of in this manner. In "Clarissa Harlowe" for instance, "Lord M." is mentioned throughout four volumes, but it could never be understood that this was the real name or any thing more than an initial. Again, an author well known to the lord chief justice (Charles Lamb) wrote a farce, entitled simply "Mr. H.," but the whole turns upon this being the initial only of a name he wished to conceal. In his prologue to it, he humorously says:

"When the dispensers of the public lash
Soft penance give; a letter and a dash —,
When vice reduced in size shrinks to a failing,
And loses half her progress by curtailing,
Faux pas are told in such a modest way,
The affair of Colonel B— with Mrs. A—,
You must forgive them; for what is there, say,
Which such a pliant Vowel must not grant,
To such a very pressing Consonant?

Or who poetic justice dares dispute,
When mildly melting at a lover's suit,
The wife's a Liquid, her good man a Mute."

And he concludes by an appeal to the consequences of this "mincing fashion," which (said the learned sergeant) I trust will have great weight with your lordships, for he adds—

"Oh, should this mincing fashion ever spread
From names of living heroes to the dead;
How would ambition sigh and hang the head,
As each loved syllable should melt away,
Her Alexander turned into great A,
A single C, her Cæsar to express,
Her Scipio sunk into a Roman S—
And nick'd and dock'd to those new modes of speech,
Great Hannibal himself to Mr. H—."

The learned sergeant then cited and argued upon a variety of cases on his side of the question, and submitted that their lordships ought to decide in favor of his client.

Mr. F. Robinson, on behalf of the plaintiff, said he did not deny the right of every Englishman, to be called by every name given him at his baptism; but he submitted that before he claimed to be privileged on that account, he must show that his privilege has been invaded. Here it was assumed throughout, that the "M." in the name "John M. Knott," was an initial letter, but he believed there were instances in which persons had been christened in this remarkable way in this country. He was told there was lately a bank director who was christened "Edmund R. Robinson;" but were it otherwise in this country, did it follow, that in no other country, Jew, Turk, or heathen might not use such names? If, however, it were an initial letter, why did not his friend apply to have the right name substituted? If it were a misdescription, it was pleadable in abatement. Such a name might originate from an error of the clergyman at the christening.

The Lord Chief Justice: In the upper circles of society it is customary to hand in the name in writing, which prevents mistake.

Mr. Justice Maule: The practice of the circles with which I am conversant was, and I believe is, to give the name verbally. There was, however, a gentleman, the sheriff of one of the counties I went through on circuit, Mr. John Wanley Sawbridge Erle Drax, whose name was very probably handed in, [laughter.]

Mr. Robinson: There are many Scotch and French names, such as M'Donald, M'Taggart, D'Harcourt, D'Horsey — how are such names to be set out in the pleadings? Suppose, again, a man's name were the name of a river, as X?

Mr. Justice Maule: But that is not spelt so; it is *idem per idem*, X for ex. Beer, I believe, is sometimes called X, but not water, [laughter.]

Mr. Robinson: There are some of our names which are precisely those of letters; as Gee, Jay, Kay, &c.

Mr. Justice Maule: But here it is not *sonans*, only *consonans*, and cannot be sounded without other letters.

Mr. Robinson: Their lordships should remember the existence of a publication called the *Fonetic Nuz*, and unless they meant to give a "heavy blow and great discouragement" to that rising science, he hoped they would not decide against his client, [laughter.] But he had seriously to submit, that by demurring to this declaration the defendant admitted, according to legal principles, that his name was that which was stated in the declaration.

Mr. Justice Cresswell referred to and distinguished this case from the case of "Roberts v. Moon," in 5 Term Reports, where a plea in abatement of misnomer, beginning "and the said Richard, sued by the name of Robert," was held bad.

Mr. Justice Maule suggested that as £65 10s. depended upon the question, it would be better for the plaintiff to amend.

Mr. Robinson declined to do so, and contended no case could be cited directly in support of the demurrer, and therefore that the court should decide in favor of the plaintiff.

Mr. Sergeant Talfourd having briefly replied,

The Lord Chief Justice: The various stages in the argument in this case have been already discussed and decided. The courts have decided that they will not assume that a consonant letter expresses a name, but they will assume it expresses an initial only; and they further decided, that the insertion of an initial letter instead of a name is a ground of demurrer, and is not merely an irregularity. In the case of Nash v. Collier, this court decided that a demurrer to the declaration which described the defendant's name as William Henry W. Collier was not frivolous, and gave a strong intimation, which the plaintiff had the good sense to attend to, that he ought to amend his

declaration. That decision was acted upon by the court of exchequer in the subsequent case of Miller v. Hayes, and as it appears to me the case is precisely similar to the present; I think we must decide in favor of the demurrer.

The other judges concurring.

Judgment for the defendant.

Court of Exchequer. — Hilary Term, Jan. 17, 1849.

COX *v.* THE MIDLAND COUNTIES RAILWAY COMPANY.

After a Railway Company was incorporated by act of parliament, an accident occurred to a passenger on the line, in consequence of the negligence of one of the servants of the company: — Held, that neither the engine-driver, the railway guard at the station where this took place, nor the superintendent of the traffic department had implied authority to make contracts obligatory on the company, with medical men called in to assist the injured person.

But such an authority might be inferred from the conduct of the directors of the company on former occasions in recognizing similar contracts made by their officers; or perhaps from evidence, that such powers were usually exercised by similar agents of similar companies.

THIS was an action of assumpsit for surgical attendance in performing the operation of amputation, brought against the Midland Counties Railway Company, incorporated by act of parliament, under the following circumstances, which appeared in evidence on the trial before Maule, J. At the Whittaker station of the railway, a laborer of the name of Higgins, who was a third class passenger on the line, was getting into a truck by the direction of one of the officers of the company, when the signal for the train to go on having been given too soon, he was thrown down and the wheels went over his leg. He was picked up and taken to a neighboring public house, and the railway guard immediately ordered Mr. Davis, the usual surgeon of the company there, to be called in. Davis came and found that the man belonged to a sick club, the members of which, he had contracted for to attend; but deeming the case a serious one, he sent his son to acquaint the station-master at Whittaker that he desired further assistance. The station-master resolved to communicate with his superior, the superintendent of the trav-

elling department at Birmingham, and after an ineffectual attempt to work the electric telegraph, sent young Davis to Birmingham by special train. The superintendent desired that every attention should be paid to the man, in consequence of which the plaintiff, an eminent hospital surgeon at Birmingham was despatched by special train to Whittaker, where he performed the operation in question. It was shown that on three former occasions the company had paid the bills of other surgeons for attendance on persons injured on their line; but it did not appear by what servants the orders were given in those cases; and indeed one of them had occurred when the present company existed as the Derby and Birmingham Railway Company, since which it had been amalgamated with some others into its present form. In that case a passenger and servant were injured; in another of the cases a railway servant was injured, and the nature of the third did not clearly appear. On this state of facts it was contended by the counsel for the defendants that the company were not liable in this action, on the grounds, first, that none of their officers were empowered by the company to enter into the contract sought to be enforced against them by the plaintiff; and secondly, if they even were, that the company, being a corporation could only confer such power by deed under their common seal. The judge reserving leave to move to enter a nonsuit, left the case to the jury, who found for the plaintiff.

Humfrey obtained a rule accordingly in Easter term, which was argued at the sittings in banc after Michaelmas term before Parke, Ralfe, and Platt, BB.

Whitehurst and *Hayes* shewed cause. The general rule of law undoubtedly is, that a corporation can only contract by instrument under their common seal; but this rule is subject to exceptions. Two have been recognized from the earliest times, viz. first, that where a corporation have duly appointed a servant they are bound not only by all acts done by him within the ordinary scope of his authority, but in matters arising on sudden emergency and urgently requiring immediate attention, when the want of such attention would be productive of injury to the corporation itself. Thus the servant of a corporation may

without express authority distrain cattle damage feasant, as otherwise they would escape: *Manby* v. *Long*, (3 Lev. 107.) So where a corporation are bound to repair a sea-wall, and the sea suddenly breaks in, so that unless the wall be instantly repaired, the country would be inundated and the corporation compelled to make compensation for the damage, their bailiff on the spot might endeavor to save them from it by ordering persons to repair the wall. The law is thus stated in the last edition of Com. Dig. "Franchise," (F.) 13, note (*w*): "Some authorities go so far as to say, not only that no servant of a corporation can be appointed without deed, but that without it no command is valid to do any particular act; others with more reason, say, that admitting that no servant can be appointed without deed, yet when he is once appointed he may do every thing incident to the nature of his service, not only without commandment by deed, but without any commandment at all;" for which is cited 1 Kyd. on Corpor. 260; 4 Hen. 7, 6, 13, 17; 7 Hen. 7, 9. Secondly, a corporation may without deed or writing give command to do certain small matters not worth the trouble of one; as for instance, to kindle a fire, make a distress, &c. In an *anonymous case*, (reported 1 Salk. 191,) it is said that a corporation aggregate may without deed or warrant appoint a bailiff to distrain as well as a cook or butler; for it neither vests nor devests any sort of interest in or out of the corporation; and that it was so held inter Cary and Matthews in Cam. Scacc. A third class of exceptions has sprung up in modern times, by which the officers of *trading* corporations have power to do on behalf of those corporations all acts reasonably necessary to enable them to carry on their business: *Yarborough* v. *The Bank of England*, (16 East, 6); *Hall* v. *The Mayor of Swansea*, (5 Q. B. Rep. 526); *Beverly* v. *The Lincoln Gas Light Company*, (6 Adol. & Ell. 829); *Church* v. *The Imperial Gas Light Company*, (Id. 846.) In *Gibson* v. *The East India Company*, (5 Bing. N. C. 270,) Tindal, C. J. after stating the general rule that a corporation aggregate can contract only under its common seal, but that on that general rule, both in ancient, and still more frequently and largely in modern times, exceptions have been grafted, goes on to say, "Our attention must be more particularly directed to that large class of excepted cases which has grown up principally in modern times,

where the contract which has been entered into is one of which the allowance is necessary for or incidental to, the carrying into effect the very purposes and objects for which the corporation itself was originally created. . . . . Where a company is instituted for the purposes of trade such company may, in matters of frequent requirement and small amount, make a valid contract relating to the trade which they carry on, without affixing the common seal, although such corporation be a corporation aggregate, without a head." Now we submit that the servants of this railway company had power to bind the company by their contract with the plaintiff, both on the principle that the making it was an act done on urgent necessity for the benefit of the company, and also that it is the act of officers of a trading corporation. If the wounded person were not attended to he might die, and the company would be liable to his executors in an action under 9 & 10 Vict. c. 93. [*Humfrey* here observed that the present case arose before that statute came into operation, and consequently that the company had a greater interest in the death than the life of the party.] At all events the principle will apply to future cases; besides which, if the necessary attention were not given to the man a coroner's jury might return a verdict of manslaughter. [*Platt B.* — Not against the company but against their officer, and the company might not care for that.] In considering the extent to which these exceptions should be carried, all the circumstances of the case and of the age in which we live must be taken into consideration. It is the uniform practice of railway companies to contract without deed for the carriage of passengers on their lines; and it was in the attempt to carry out one of these contracts that this accident arose. Again, a case like the present could not have occurred until very modern times; for railway travelling is altogether a modern system, and differs in these two important respects from the old one; first, that incorporated railway companies act by a board which cannot be called together to affix a seal without certain notices and some delay; secondly, that a railway differs from a highway in this, that the latter is free to every one, but the public are trespassers if they go on the former without leave; so that in the event of an accident no person but the immediate servants of the company or other passengers, could render any assistance; the latter of

whom are not *bound* to render any, and the former, who, when a train is on its route, are the driver, fireman, and guard, might be disabled themselves and incapable of doing so. When an accident occurs on a line of railway there are many things which must be done immediately; as for instance, to remove broken carriages and rails, or to mend them so as to enable the journey to be continued. Or suppose a case containing valuable goods were injured and could not go on without repair, or a horse injured himself in a horse-box, the officer on the spot must have authority to order the case to be repaired, or to call in a veterinary surgeon. [*Parke*, B. — The rule respecting the necessity of corporations acting under their common seal was fully explained by this court in the case of *The Mayor of Ludlow* v. *Charlton*, (6 Mee. & W. 823,) where it is said that it is a great mistake to suppose that that rule is a relic of ignorant times, and that attempts to get rid of it, except in the cases pointed out by law, might be productive of great inconvenience. Now, according to your argument, would every servant of this company, the station-master, the guard, &c., down to their common policeman, have power to bind them by a contract like this?] No. The station-master would in the first instance be the proper person, but in the present case not deeming his authority sufficient, he reported the matter to his superior, by whom the order was given. The power of these officers is limited to doing what lies within the limit of their employments, and is reasonably necessary for the benefit of the company. Suppose a passenger going in all haste to a sea-port with a view of embarking for America, having with him a quantity of valuable jewellery, if the package in which it was contained became damaged by an accident so that it could not with safety be carried further, the station-master, &c., might not have authority to send for a jeweller to London, to put it together again. [*Parke*, B. — Suppose an accident were to happen to a stage-coach; would the proprietor be liable for contracts made on the spot by the coachman with the view of repairing the mischief?] That depends on circumstances; if a lynch-pin came out of a wheel it would require immediate attention; and at all events the coachman might do as was done here, report to the officer at the office, and ask for authority to act. But on the other point, even supposing that such an

authority as this, in the servants of this company to make contracts like the present, cannot be implied by law, the conduct of the company on the three previous occasions is evidence, especially in the absence of any counter-evidence, of their having conferred it. It is not suggested that the operation performed by the plaintiff was unnecessary, or that the charge for it was unreasonable.

Macaulay, in support of the rule, argued, that the cases in which corporations were enabled, at common law, to do small acts without deed, must be understood of corporations aggregate with a head; that the proposition of the opposite side went to this length, that *every* servant of a railway company, through whose negligence an accident has occurred, can make contracts to bind his employers with any persons whom he may deem right to call in to remedy the mischief. It might as well be contended that a gentleman's coachman, who drives against a carter and injures him, might on the spot employ a medical man to cure him, and pledge his master's credit for payment. [*Rolfe*, B. — Or suppose a lamplighter burns a person so as to cause him serious injury, has he or any officer of the gas company power to pledge the credit of the company for his cure?] *Cur. adv. vult.*

The judgment of the court was now delivered by

Parke, B. — This case, which was an action of assumpsit for medical attendance, was tried before my brother Maule, at the last spring assizes for Warwick. The learned judge reserved leave to move to enter a nonsuit. A rule to show cause having been granted, the case was fully argued at the sittings after last term.

The facts appeared to be these: — One Higgins, a laborer, met with an accident from the moving of a truck on the defendant's railway. The railway guard applied to a Mr. Davis, a surgeon in the neighborhood; he found the case a serious one, and wished to have the assistance of the plaintiff, an eminent hospital surgeon at Birmingham; his son informed the station-master at Birmingham, who had, according to the evidence, acted as chief officer there in the passenger, and indeed in every, department, who desired that every attention should be

paid to the man. The plaintiff was accordingly requested by Davis to perform the operation of amputation, which he did successfully, and in this action sought to recover compensation for that service from the company.

If the station-master was authorized to enter into such a contract, there is no doubt evidence to go to the jury that he made the contract on which the action was brought. The principal question is, had he such authority?

The learned counsel for the defendants contended that they were not liable, because, being a corporation, they could only contract under their common seal. To which it was answered, first, that a corporation aggregate may give personal command to do small acts without deed, as, to retain a servant, cook, or butler, for ordinary service, and that the species of employment of the servant who gave the order to the plaintiff fell under that description, and that he was authorized, from the nature of that employment, to bind the corporation by such a contract as would be inferred from that order; and secondly, that if the corporation could not bind themselves by such employment and the contract incident to it at common law, they could by virtue of the statute constituting them a corporation for the purpose of constructing and maintaining a railway, and if they thought proper, of carrying on upon it the trade of carriers of passengers and goods for hire; for then it must be incident also to such a corporation to appoint servants of various sorts, and on reference to the act of parliament there is no doubt they had this power, and probably without an instrument of appointment under seal: and that, considering the nature of railroad traffic, each of these servants had, as incidental to his employment, an authority, in case any thing occurred which would be prejudicial to the interests of the company, to do what was reasonably fit to be done under the circumstances, to remedy or diminish the damage done. It was contended, therefore, that if one of these servants happened to be near at the time of the slip of an embankment, which, for the purpose of securing the safe and speedy traffic along the railroad, ought to be immediately removed, he would have an implied authority, when fresh laborers were required, to bind the company by a contract to pay them: and that in like manner any servant who was near, or at all events, the head servant of the nearest sta-

tion, would be authorized, if a passenger received personal damage requiring immediate surgical attendance, to contract with a surgeon, and to bind the company by that contract to pay what was reasonably due him — such authority being an incident to his employment, considering its peculiar nature, and it being for the benefit of the company that the damage and consequent loss to them from an occurrence for which they were responsible, should be as much mitigated as possible.

Further, it was contended for the plaintiff that if such an authority was not incidental to the employment of a railroad servant, there was evidence in this case of its having been given by the directors, on whom the management of the business of the company was by the act of parliament establishing it conferred. That evidence consisted in payment by the company on three other occasions of the bills of surgeons, not of the plaintiff, for attending persons who had been hurt on the railroad. We intimated our opinion in the course of the argument, that these instances of payments did not afford sufficient evidence to go to the jury of a special authority to make the contract in question. One of the instances of payment was the case of an injury to a servant, and to a passenger, before the railway belonged to the defendants, the second was an injury to a railway servant, the third was *uncertain*, but what *particular* servants gave the order in each case did not appear. These payments were *evidence* of an authority given to the servants who gave the orders, to make those particular contracts. *If* they were evidence of a general authority to those particular servants to make such contracts, they were certainly not evidence of a similar general authority to all their servants. It is obvious that the company might choose to entrust one servant with such power and not another.

The question therefore does not turn upon these special circumstances, but depends on the authority of the servant who gave the order.

On the part of the defendants it was insisted, that neither at common law nor under the statute was such a power given to the corporation as to bind themselves by this contract. That the common-law power was limited to a corporation with a head, to do small acts; that though this statute might give this corporation the power to enter into some contracts, and the power

even to appoint some servants without deed, in the management of its concerns; yet the authority to enter into such contracts as this with a surgeon was not an incident to the employment of the servant who made it, and this is in truth the only point in the case. And we are all of opinion that the power to enter into this contract was not incident either to the employment of the guard or superintendent.

The simple employment of servants by a corporation carrying on a business, cannot give them as incident to that employment a larger authority than if the same appointment were made by a partnership of as many individuals as the shareholders of the company; nor does it appear to us to make any difference that it is carried on by fewer members, or even by a single individual: a partnership of many who do not mean to act personally in the management of their own affairs, as an individual or a partnership of a limited number of acting partners does, may think it right to invest some of their servants with all or part of the power and authority of partners; but supposing they do not, and there was no evidence of such an authority in this case to any but the directors who possessed by statute the management of the affairs of the company, the function and authority of servants in different capacities must be the same in both cases. The power and duty of an engine-driver must be the same, simply as such, whether he be employed by a corporation, a joint-stock company, or an ordinary partnership, or an individual, all of whom may carry by the railroad. The driver appointed by a corporation or company or partnership carrying on the business of carriers of passengers or goods, must as such have the same duties and powers. It is not easy to decide whether unforeseen accidents would occur more frequently in the carriage of passengers by locomotive power on railroads, or in carrying the like number by coach on ordinary roads; certainly there is no such difference as to make the duties of an engine-driver and coachman different as to the power of making such contracts as that in question, nor the duties of porters, clerks, or other servants connected with the carrying department.

Could it be maintained that a coachman, from whose carriage a passenger had fallen, and broken his arm, or by which another person had been run over, or a house-keeper who happened to be near, or the book-keeper, could bind his master by a contract

with a surgeon to cure the injured person and oblige his master to pay the bill? We are of opinion that he could not. Though it might be a benefit to the master to have the damage diminished by a speedy cure, if he was really liable for that damage, it would be a prejudice to him to be bound to pay if he was not: and is the servant to decide whether his master is liable or not — a man whom he has not appointed with any view to the exercise of such a discretion?

We think the servant has clearly no such power. The employer of an agent for a particular purpose gives only the authority necessary for that agency under ordinary circumstances; as this court held in the case of an agent to a mine, where the question was as to his power to bind his principals by borrowing money, when an emergeney arose in which it was highly expedient to do so, and it was held he had no such power. *Hawtayne* v. *Bourne*, (7 Mee. & W. 595.) The employment of an agent gives also the powers *usually* exercised by similar agents, but there was no evidence of any usage in this case. We therefore think the company are not liable, whether we suppose the railway guard or the superintendent at the station to be the person making the contract.

It is not to be supposed that the result of our decision will be prejudicial to railway travellers who may happen to be injured. It will rarely occur that the surgeon will not have a remedy against his patient, who if he be rich must at all events pay, and if poor, though a sufferer, will be entitled to a compensation from the company, if they by their servants have been guilty of a breach of duty, out of which he will be able to pay, for the surgeon's bill is always allowed for in damages. There will therefore be little mischief to the interests of the passengers, little to the benevolent surgeons who give their services; but it would be a serious inconvenience to the public, if the rule of law, as applicable not merely to railroad companies but to all partnerships and individuals, as to the extent of authorities given to an agent, were relaxed out of a compassionate feeling which it is difficult not to entertain towards the suffering party, the present plaintiff.

The rule must therefore be made absolute. — *Rule absolute.*[1]

[1] The case of *Cox* v. *The Midland Railway Company* (13 Jur. 65) has excited discussion within and beyond the circle of the legal profession. The decision is, un-

doubtedly, one of great importance, affecting the safety of the public and the liabilities of railway companies. We agree with those who maintain that the rules of law should, where it is possible, be moulded so as to meet the exigences of the times, and the new relations which may be created between man and man by altered circumstances of a general and widely influential character; but we think that this was not a case for the determination of which it was necessary to adopt such a course.

The point for consideration was, whether, if a person has been injured through the negligence of a servant of the company, the superintendent of the traffic department could bind the company for the payment of the medical man employed to attend the injured person by such superintendent?

It was, therefore, the simple case of principal and agent, of master and servant; and the law which governs those relations was the law to be administered on this occasion. It makes no difference, in this respect, whether the principal be a corporation, a company, or an individual.

The civil liability of a master for the contract of his servant is clearly founded upon the express or implied authority of the master for the making of the contract; and such authority must be proved by direct evidence, or by circumstances whence it may be inferred by the jury. In the instance of a special agent — e. g. the superintendent of the traffic department of a railway — he is ex officio invested only with limited powers, and it is the duty of those who deal with him, as an agent, to ascertain the extent of his authority. If they do not take this precaution, they contract with him at their peril, and must bear any consequent loss.

It is true that this was a case of urgent necessity. There was no time to learn the will of the principal. It was the natural and moral duty of the superintendent not to hesitate in sending for a medical assistant to attend the wounded man; but there was no *legal* obligation imposed upon him to do so; neither would there have been on the company or its directors, had they been present. As far as regards the urgency of the case, it was governed by the decision of the exchequer in *Hawtayne* v. *Bourne*, (7 Mee. & W. 595,) recognized and acted upon in *Ricketts* v. *Bennett*, (17 Law Journ. N. S., C. P. 17.) There, a resident agent was appointed by the directors of a mining company to manage the mine; warrants of distress were about to be enforced against the machinery in the mine, whereby it would probably have been flooded by water; and, in order to prevent the seizure, he borrowed the money, and paid it in satisfaction of the debts. It was held, that he had no implied authority from the shareholders to do this. Baron Parke there said — "The law provides for that which is common, not for that which is unusual." And the question in such cases appears to be, what is the authority of the agent in *ordinary* circumstances? For such is the authority supposed to have been contemplated by the principal when he appointed a delegate for particular purposes. It has also been decided, that a master is not impliedly liable for medical attendance upon his own servant, who has met with an accident in his service; *Wennal* v. *Adney*, (3 B. & P. 247;) *Reg.* v. *Smith*, (8 C. & P. 153;) and it would, therefore, be difficult to hold, that a master should be impliedly liable for such attendance procured by his servant for a third party.

The court, in the principal case, seem to have considered that this class of railway servants have no more authority to bind the company, than is possessed by a coachman to bind the proprietor of a coach. They also appeared to be of opinion, that, to hold such a contract binding on the company, would be to allow the servant to decide whether the company were liable for the injury. There would probably, therefore, have been danger in extending the doctrine of implied liabilities (which in themselves are dangerous) to this case; and the court of exchequer were warranted in arriving at their conclusion, both upon principle and by the force of analogous decisions. Still it cannot, we think, be denied that the law requires amendment in this respect. The medical profession have earned an honorable renown for humanity, and are in general, we believe, actuated by high motives in the discharge of their duties. There must, however, be many amongst them who would object to leaving their home and immediate business to take a long journey and attend upon a poor man unable to

remunerate them for their services. A medical man should not be subjected to the loss, nor a man who has met with an accident to the danger of being deprived of assistance. In the case we have been considering, it was deemed requisite to have the services of an eminent surgeon; and Mr. Cox (who bears that character) had to travel at night forty miles to the patient.

If the company are liable for the accident, they are liable to the sufferer for the expenses of his medical attendant. Since Lord Campbell's Act, (9 & 10 Vict. c. 93,) it is to their pecuniary interest that the man injured by them should not die. It is only, therefore, when the accident is not caused by them, (cases which are very rare, and not to be determined with certainty at the time of their occurrence,) that they might suffer loss, in a pecuniary sense, by being liable in the first instance for medical expenses.

Looking at all the incidents of the question, the safety of the public, and the requirements of common humanity, we think that railway companies should at once declare, that they will be liable in the first instance for all expenses reasonably incurred on behalf of persons who have been injured on their line of railway, but that such liability shall be no admission of their liability for the accident; and that, if the accident has occurred through the party's own negligence or wilfulness, he shall reimburse the company the expenses. If such a resolution be not come to by the companies themselves, we trust that the legislature will exert its compulsory powers for this object. *London Jurist, February* 17.

Abstracts of Recent American Decisions.

Court of Errors of South Carolina, May Term, 1849.

Workman v. *Domirick. Statute of Wills.* An executor is not a credible witness within the act, notwithstanding he refused to qualify.

Bank of the State of South Carolina ads. *Ross. Priority of Mortgages.* A mortgage given to secure a debt to the bank, in the ordinary course of discounting, and not under the clause of the act directing loans to be apportioned among the directors, and to be secured by bond and mortgage, is not regarded as recorded under the provision of the act relating to such loans, and was postponed to a previously recorded mortgage.

Wilson et. al. v. *John's Island Church. Church Property.* The defendants, members of the John's Island church and of the corporation, by re-uniting their church to a presbytery with which they had, by resolution, dissolved their connection, were held to be restored to their rights of property, in common with the plaintiffs, in the property and corporate rights of the church.

McLeish v. *Burch et al. Slave Act of* 1841. A bequest of slaves to the defendants, executors of testator, with the direction that no other service or wages were to be required of them than may be sufficient to pay their taxes, having vested before the Act of 1841, was held to be untouched by it, and was good, under the authority of *Carmille* v. *Carmille* (2d McMull. 454.) So, too, devises and bequests of money or

property to the slaves, or for their use, were held to vest in their owners, the defendants.

Hillon v. *English. Sunday.* A verdict rendered on Sunday held good. *O'Neale, J.*, dissented.

Wilson v. *Bailor. Construction of Will.* This bequest, "I give and bequeath to Catharine Bailor, daughter of Thomas Curtis, all my negroes and property, which I am possessed of, or may have, *by her to be freely enjoyed to every intent and purpose, as her own property,*" was held not to confer a separate estate, notwithstanding the legatee was a married woman at the execution of the will, and death of the testator.

Court of Appeals.

McColman v. *Wilkes. Trespass.* The plaintiff had possession of part of a tract of land, claiming it under a junior grant to himself. He produced also the oldest grant, but did not connect himself with it. The defendant was in possession, under a grant older than the grant to the plaintiff. It was held that the plaintiff could maintain trespass quare clausum fregit.

Williams v. *Prince. Husband and Wife.* The defendant and his wife separated. The plaintiff, a physician, attended her; he knew the fact of separation — afterwards, the husband took her back. It was held that the husband was not liable.

David, Ordinary, v. *McCollum. Payment by an Administrator.* It was held, that a payment made by an administrator and distributee of an intestate, on a settlement made by the ordinary, including in it an amount due by the administrator, on account of an assignment to him as distributee of part of the real estate, and the receipt for which payment stated it to be on account of the real estate and personal estate, was rightly disposed of by apportioning it; the defendant, as surety, being liable alone for the personal estate so reduced by a proportionate share of the payment.

Parnell v. *Parnell et al. Award.* Under a reference to four arbitrators, with power of umpirage, it was held that an award made by three of the original arbitrators was good.

Booth v. *Dunning. Evidence — Gift.* The defendant, after the marriage of his daughter to the plaintiff, told his wife that she might send the slave, the subject of this action (trover,) to the plaintiff, until further orders. This proof was held to be admissible, notwithstanding neither plaintiff nor his wife was present. But still it was for the jury to consider, and weigh with the other proof in deciding the question of gift or no gift. The defendant, on the death of his daughter, took the boy home. The jury found for the plaintiff. The court refused to disturb the verdict.

Lewis v. *Lewis. Parent and Child.* The defendant, the son of the intestate, was under age, but living apart from his father, keeping school, and receiving for himself the profits. On a visit to his father, he was taken sick. His father sent for a physician, who charged his bill, $58, to the defendant. He paid part, $25; the intestate paid the balance,

$ 33, and insisted that his son was bound to refund it. It was ruled, that the payment was voluntary, and the plaintiff could not recover.

Villepique v. *Shuler. Action.* The daughter of the plaintiff, more than twenty-one years of age, owned the house and lot where she and her mother lived, and all the other property about the place. She, however, worked for her mother and family. It was held, that the plaintiff, the mother, could maintain an action for her seduction and getting her with child.

State v. *Brown. Indictment — Abduction of Slaves — Evidence.* If there be one good count, the conviction will be referred to that. The supernumerary jurors were drawn on Monday, and were presented to the prisoner in the order so drawn; this was held to be correct. To carry away a slave from an owner, and against his will, with the intent to set him free, is stealing a slave, under the Act of 1754. Though there may be three offences charged in the indictment, yet, if they be subject to the same judgment, they may be joined in the same indictment. The proof covered the six counts of the indictment, in which the prisoner was charged with stealing a slave or slaves, hiring another to steal him or them, and aiding the slave or slaves to run away. The proof of an accomplice, even uncorroborated, may possibly sustain a verdict of guilty, if the jury be properly advised that he ought not *generally* to be believed, without proof corroborating him. Proof corroborating his statement of the felony, may be enough to give him credit before the jury. Proof corroborating him in showing the prisoner's connection with the felony, is all which can be required to give him credit. The prisoner's motions in arrest of judgment and new trial, were refused.

Gale v. *Hayes. Slander.* In an action of slander, the colloquium did not state the words (imputing a false swearing,) to have been uttered of and concerning a trial before a magistrate, and of concerning the testimony given by the plaintiff. For this defect the judge below would not allow evidence to be given of the trial or of the testimony; and in consequence of it, the plaintiff was non-suited. The court set the non-suit aside, holding the defect could only be taken advantage of by special demurrer.

Sims v. *McLeudon. Malicious Prosecution — Evidence.* In this case, (malicious prosecution,) the plaintiff had been charged by the defendant with the murder of his wife — a warrant was issued, and the plaintiff was arrested. No further proceedings were had. The malice of the defendant, to be revenged for an indictment set on foot by the plaintiff against him and his brothers, for the murder of a brother of the plaintiff, was apparent. The defendant, in making the information against the plaintiff, professed to act on knowledge derived from Herbert Mathis and Jesse Truett, as appeared by their statements or affidavits to the same effect as his own. The plaintiff's wife died with the dropsy. It was held there was no probable cause — as there was no slaying, it was held, *that proof* that the plaintiff had said he had given his wife a whipping, which would stand for one, was properly rejected.

Fulmer v. *Harmon. Malicious Prosecution.* In malicious prosecution, it was ruled, that the finding of "no bill," by the grand jury, and the

consequent discharge of the prisoner by the court was not *primâ facie* evidence of a want of probable cause.

Stover et al. v. *Duren. Presumption.* In this case, in conformity with the ruling below, it was held, that in an action of debt, on a judgment recovered in 1822, the legal presumption of payment arising from lapse of time, twenty years, was not rebutted by a mere admission that the debt was or might be paid. The defendant, in 1822, was arrested under a *ca. sa.* in this case; he remained in the prison rules for more than a year; he had been at large for more than twenty years. It was held that the arrest was satisfaction in law, until it was shown that satisfaction in fact did not result from it; and that this was not done by showing that the defendant had been at large twenty years. Such a lapse of time strengthened the presumption of satisfaction in fact.

Bacon et al. v. *Soudley, Adm'r. Contract — Agency.* The defendant's testator had ordered a piano forte for another person; it not arriving in due time, such person declined to take it. Defendant's testator gave notice to the plaintiff to retain it; it was, however, shipped before the notice was received; and when the bill of lading came on, defendant's testator told the person for whom it was ordered, "*he was discharged, and if the plaintiffs missed the sale of their article, they had no one to blame but themselves.*" He died a few days after the piano forte was received subsequently. The plaintiffs wrote to inquire of the defendant concerning it, and the prospects of payment. They afterwards demanded of him the piano forte. He refused to give it up; inventoried and sold it. They brought trover to recover it. *Held*, that the plaintiffs could recover; the defendant's testator being no more than an agent for the plaintiffs, from his own words, to deliver it to a third person, who declined to take it.

Simonton v. *Yongue. Attorney — Witness.* An attorney who, it was alleged, had directed the sheriff to suspend proceedings on a bail writ brought by the plaintiff, and for the failure to arrest the defendant under such writ, this action was brought, was held to be a competent witness for the plaintiff.

Rupert v. *Dunn. New Trial.* The verdict in this case for the defendant, was rendered on the fourth trial. The first verdict was also for the defendant; it was set aside, and a new trial ordered; two mistrials followed. Under such circumstances, it was held there should not be another trial upon facts which, although controverted by the plaintiff's testimony, yet, on the part of the defendant, showed that the defendant, in the purchase of the land for which the note was given, had been deceived in the representation that there was a good mill seat on it, which was the main inducement to the contract, when, in fact, the mill seat was of no value, inasmuch as the water could not be raised of sufficient height to propel the mill without flowing the lands of other persons.

Branford v. *Pratt, Adm'r. Contract — Evidence — Note.* Work done for two persons, each of whom agreed to pay their respective parts, is not a demand against copartners, and may be sued for and recovered separately. Although generally, a note is *primâ facie* evidence, that all demands anterior have been settled; yet, it is a mere presumption of fact,

and a verdict finding for work done to a much larger amount, both before and after a very small note, will not be disturbed.

Yongue v. *Aiken. Evidence.* Between the sheriff selling a debtor's goods, and the purchaser, the owner is indifferent, and may be sworn as a witness for the plaintiff. *Frost, J.* before whom the cause was heard, dissented.

Satterthwaite v. *Kennedy. Mortgage of Slaves.* A mortgagee of slaves, after condition broken, may seize them after night, to foreclose his mortgage. If they be seized peaceably, without violence to the mortgagor, his family, or his houses, there is no trespass for which an action can be maintained.

Leach v. *Kennedy. Witness.* One of three joint and several makers of a promissory note, may if not sued with the defendant, prove his signature.

Levy v. *Story. Witness. Sum. pro.* on a due bill in the following words: "Due sheriff Levy, out of the note in the hands of J. P. Dickininson, for which I have given him an order, the sum of $47.08 cts. to satisfy a *ca. sa.* in the office, against J. Gibson." In the defence, Gibson was offered as a witness, and excluded. The court of appeals held that he had no apparent interest. The decree was set aside, and a new trial ordered.

Bradley v. *Long. Mistake.* A mere mistake of the judge, in speaking of the defendant, when he meant the plaintiff, and which is apparent from the whole tenor of his charge, is no ground for a new trial.

Ingram v. *Phillips. Resulting Trust — Notice.* Indebtedness existing at a sale of a debtor's land, by the sheriff (at which, by an arrangement with his son, it was bought for a very trifling sum, conveyed to him by the sheriff, and then to the debtor's daughter, the debtor to have, with her, possession, he paid the sum at which it was bid off, and also for the title,) will not make the sale and subsequent conveyances void, if all the existing debts be afterwards paid off. Such conveyances are not within the 13th and 27th of Eliz., and cannot thereupon be avoided by subsequent creditors *at law*. The only interest which the debtor has under such an arrangement, is a resulting trust which cannot be reached at law. A deed not recorded is good against a purchaser, under an execution, with notice. *M'Fall* v. *Sherard*, (Harp. R. 295.)

James, Ex'or v. *Woodward et ux. Will — Undue Influence.* A will by a man of sound mind, in his ordinary health, and who lived for months afterwards, will not be set aside for alleged undue influence exercised over the father, by a son exasperated against his sister, who had married against the will of his father, and who appeared to be equally displeased with her, and who declared the will to be the result of his own indignation at his daughter's conduct.

Gray v. *Bates. Presumption — Adverse Possession.* The defendant and her husband, had been for near thirty years in possession of the land, two hundred acres, originally conveyed by Bourdeaux to Nelson, and by his heirs to Jackson. No conveyance from Jackson could be produced, but the possession had been continuous by persons claiming under Jackson, until defendant and her husband entered. It was held that a deed

from Jackson might be presumed. Bourdeaux was one of three grantees of a large tract, of which he conveyed two hundred acres to Nelson, who was in the actual possession of part, for more than five years before 1806. It was held that his possession under Bourdeaux's deed gave him a good title by adverse possession against Bourdeaux's co-tenants. New trial ordered.

McKenzie v. *Allen*. *Exemplary Damages*. The action was assault and battery, for striking the plaintiff repeatedly over the head with a whip; and on the plaintiff returning with his fist, the blows, the defendant dropped the whip, and with a concealed bowie knife, inflicted a severe wound on the plaintiff's head. The jury found for the plaintiff $1,000, which the court thought a very just verdict. It was ruled, that the defendant could not prove in defence that the plaintiff was an officious intermeddling magistrate, nor that he was a quarrelsome man. The defendant's attorneys having in their arguments repeated these charges without proof, which those for the plaintiff denied, and asserted his character was good, it was held that the judge below had the right to comment on such allegations, and his direction to the jury, if they knew the plaintiff's character to be good, that it might enhance the damages, was right enough.

Lamar v. *Scott*. *Conflict of Laws*. A widow, living in Georgia, where by the law of that state, she cannot claim dower in land, aliened by her husband, during coverture, is not thereby precluded from claiming, and having her dower in lands lying in this state, aliened by her husband. The *lex loci rei sitæ* governs.

Bank of State of South Carolina v. *Bowie*. *Act of* 1815. Under a bond given by J. B. as the agent of the bank, conditioned to discharge his duty and account for all the funds placed in his hands, the plaintiffs recovered a verdict for $11,721.11, with interest from 16th February, 1836. This was held to be an interest bearing demand, under the act of 1815.

Abstracts of Recent English Decisions.

House of Lords.

[*Coram* The Lord Chancellor, Lords Lyndhurst, Broughman, and Campbell.]

Livesey v. *Livesey*, April 23, 1849. *Construction of Will — Eldest Son — Vesting*. A testatrix gave to the eldest son of her daughter E. and her then husband, who should be living at her decease, ten guineas, adding, that she left him no larger sum, because he was otherwise handsomely provided for, stating the manner. She then gave the residue of her property to her executors, upon trust, that, as to one moiety, they

should pay and divide the same "unto and among all and every the children of my daughter E. who are now in being or shall hereafter be born, (save and except her eldest son, or such of her sons as shall, by the death of an elder brother, become an eldest son,)" equally to be divided amongst them and their survivors when the youngest shall arrive at the age of twenty-one. E. had five children at the death of the testatrix. The eldest son was provided for, as mentioned in the will, but died without issue before the youngest attained twenty-one. The second son, who became an eldest son, did not succeed to the provision which the eldest brother had. *Held*, that the son who was the eldest at the time of the youngest child attaining twenty-one was excluded from participating in the residue, although he did not take the property which, in the first part of the will, was expressed to be the motive for the exclusion.

Privy Council.

[Before Lords Langdale and Campbell, the Chancellor of the Duchy of Cornwall, and the Judge of the Admiralty Court.]

[Appeal from British Guiana.]

Allen et al. v. *Kemble et al.*, June 28, 1848. *Bill of Exchange — Lex loci Contractus.* As between the holder of a bill of exchange and the drawer and indorser, the *lex loci contractus* of the drawer and indorser, and not of the acceptor, governs the liabilities of the drawer and indorser respectively. Therefore, where A. (resident in Demarara) drew a bill of exchange in favor of B. (also a resident in Demarara) upon C., resident in Scotland, and C. accepted it, making it payable in London, B. indorsed the bill to D., who became bankrupt. When C.'s acceptance became due, he held a bill of exchange accepted by D. D.'s assignees brought an action in Demarara against A. and B. upon the bill of exchange. *Held*, that the law of Demarara, (Roman Dutch law,) and not the law of England, must govern this case, and that, under that law, A. and B., the drawer and indorser of the first bill, were at liberty to plead D.'s bill as compensation, *pro tanto*, of the first bill.

In this case the decision in *Rothschild* v. *Currie* (1 Adol. & Ell. N. S. 43) was questioned, and the comments in Story on Bills (note to § 177) cited with approbation. 13 Jur. 288.

[Appeal from the Prerogative Court of Canterbury.]

Smee v. *Bryer*, July 17, 1848. *Wills Act.* The words, "at the foot or end thereof," in the wills act are to be construed strictly. *Held*, therefore, where the will terminated within an inch of the bottom of the third page, but the signature was on the fourth page, that the will was invalid, although the testatrix, at the time of the execution, explained to the witnesses why she signed. 13 Jur. 288.

Court of Chancery.

Mapp v. *Ellcock*, January 31, 1849. *Residue undisposed of — Executor and next of Kin.* A testator bequeathed all his property to "A., his executors, &c., to and for the several uses, intents, and purposes following." Then followed certain trusts, which did not exhaust the entire property; and at the end of the will came the following clause: "Lastly, I nominate, constitute, and appoint the aforesaid A. executor of this my last will and testament." The testator died before the passing of the 11 George IV. and 1 William IV. ch. 40. *Held*, that A. was a trustee of the residue for the testator's next of kin.

The decision of Sir William Grant in *Dawson* v. *Clark* (15 Ves. 409,) overruled. 13 Jur. 290.

Court of Queen's Bench. Sittings in Banco after Hilary Term.

Lenford v. *Fitzroy*, February 8, 1849. *Bail.* The duty of a magistrate in respect of admitting to bail is judicial, and, therefore, an action cannot be maintained against him for refusing to admit to bail a person charged with a misdemeanor, and entitled to be admitted to bail, without proof of malice. 13 Jur. 303.

Vice Chancellor of England's Court.

Worthington v. *Morgan*, February 26, 1849. *Priority — Deeds — Receipt.* The conveyance to a purchaser recited that the purchase-money had been paid. Part of it had not been paid, and the vendors retained the deeds. The purchaser mortgaged without informing the mortgagee of the facts. *Held*, that the vendor's lien was prior to the claim of the mortgagee. See *Allen* v. *Knight*, (11 Jur. 527.) 13 Jur. 316.

Attorney General v. *Marsh*, March 27, 1849. *Injunction — Amendment.* An information was amended by adding a plaintiff. *Held*, that an injunction previously obtained was thereby rendered void. See *Schneider* v. *Lizardi*, (9 Beav. 461.) 13 Jur. 317.

Drevor v. *Mawdeshy*, February 20, 1849. *Practice — Accounting Party — Trustee — Liability — Banker.* An accounting party in a cause should not apply by petition for his discharge. Where a receiver had been appointed, but *cestuis que trustant* were infants, and the trustees, after the suit was established, allowed a balance to remain many years in the hands of bankers. *Held*, that the trustees were liable on the failure of bankers.

Yates v. *Haddam*, April 24, 1849. *Will — Construction — Domicile — Annuity.* A testator, domiciled in Jamaica, gave his son one clear annuity

of £100 per annum for life; and should he die, a child surviving him, the testator continued the same annuity for such child's use and benefit, to be paid to his or her mother. The testator then gave other annuities of £100 *sterling*, and gave the residue of his estate, real and personal, to trustees, on trust, to pay the several legacies and annuities therein before given. He made codicils to his will in England, and died domiciled in England. *Held*, that the annuity was a perpetual annuity to the child of the son of £100 Jamaica currency. 13 Jur. 331.

Notices of New Books.

A Table of the Cases contained in the three Volumes of the United States Digest, and in the two Volumes of the Supplement, alphabetically arranged, with a Reference for each Case to the Volume and page of the Report whence the Case is taken, and to the Volume and Page of the Digest where it is Found. By George P Sanger, Counsellor at Law. Boston: Charles C. Little & James Brown. 1849.

We speak from personal knowledge, and after a thorough examination, when we say that this work has been executed with the most remarkable fidelity and accuracy. To form an idea of the magnitude of the task, it may not be amiss to say that it contains between fifty and sixty thousand cases. These are alphabetically arranged, and the references are made both to the page of the volume where the case is reported, and to the page of the digest where it is found.

When we say that such a work is accurate and complete, we say all that need be said. It is a monument of patient industry.

Digest of the Decisions of the Supreme Judicial Court, of the State of Maine. Contained in Greenleaf's, Appleton's, and Shepley's Reports, and comprising Twenty-six Volumes of the Maine Reports. By Philip Eastman. Hallowell: Masters, Smith & Co. 1849.

We are happy to announce the publication of this work, and to add, that its systematic arrangement, and careful execution fully entitle it to the confidence of the profession. It may seem a work of supererogation to call attention to the value of the reports which Mr. Eastman has digested. Since the separation of the "District of Maine" from its parent state, its supreme judicial court has maintained a high rank for learning and intelligence. The names of its Justices (which have been carefully collected by Mr. Eastman) would do honor to any state. Their recorded decisions are carefully analyzed in this Digest.

In his preface, Mr. Eastman makes one remark *apologetically*, as it would seem, which we are surprised at. He says, "In endeavoring to give, as briefly and explicitly as possible, the points or principles in each case, and in connection with, or close proximity to, the abstracts of other cases of the same class, it was often found inconvenient to transcribe the abstracts, precisely as prepared by the reporters, and prefixed to the several cases. In very many instances, they are considerably modified in form, to adapt them to their locality, and generally condensed." Now, so far from tending any apology, we think the course of the editor, in this respect, adds very much to the value of the Digest. The confidence in the work will be greatly increased.

In citing from the reports, Mr. Eastman acts upon the suggestion of the Legislature, citing them simply as "Maine Reports," giving the number of the volume in the order in which they were published, commencing with Greenleaf. We wish that the same rule might be adopted in all the states.

REPORTS OF CASES ARGUED AND DETERMINED IN THE SUPREME COURT OF THE STATE OF MICHIGAN. Vol. II. By SAMUEL J. DOUGLASS. Detroit: Munger & Pattison, Printers. 1849.

This volume contains the decisions of the supreme court of Michigan, from January, 1845, to January, 1847, inclusive. It constitutes a valuable addition to the reports of the state, and has evidently been prepared with great care. We have not had time to examine it as fully as we wished, and are not able to give a detailed account of all the cases, which it contains, several of which, at least, involve leading principles. The last case in the volume, for instance, *Town* v. *Bank of River Raisin*, contains a discussion of a question of great importance. A point was made by the counsel for the complainant, that an assignment of corporate property in trust for the payment of debts, was in effect a surrender of the franchise of the corporation, without the concurrence of the sovereign power which created it. The court recognized the established principle, (citing *Revere* v. *Boston Copper Co.* 15 Pick. 351; *Boston Glass Manuf.* v. *Langdon*, 24 Pick. 49,) that an act of incorporation being a compact between the state and the corporators, the corporation cannot dissolve itself, by its own act merely; but a dissolution can only be effected by the assent of both the parties to the compact, or by the judgment of a court of competent jurisdiction. This being settled, a question arose whether the assignment of the corporate property operated either as a surrender of the charter, or a dissolution of the corporation. It was held that it did not. The opinion of the court is very elaborate, and the conflicting authorities are faithfully examined. The conclusion was not arrived at without difficulty, and several other embarrassing objections were raised. To the Bar of this commonwealth, who are constantly considering the same question with regard to railroad bonds, we think this decision will prove interesting.

We cannot oonclude this notice of this volume without a renewed expression of satisfaction, with the great accuracy and care which is manifested by the reporter. It will undoubtedly be well received.

Miscellaneous Intelligence.

REPORT OF THE SOLICITOR OF THE TREASURY.

We are indebted to Mr. Gillett for a copy of his valuable report. Had we more room, we should take the liberty of borrowing some of his tables in order to exhibit the importance of his office. On page 109, there are some curious disclosures as to the emoluments of the officers of the Federal Courts.

The following exhibit will probably interest some readers.

Statement of the fees and emoluments accruing to the district attorneys, marshals, and clerks of United States courts, compiled from returns made in 1846, *in conformity with the act of Congress approved May* 18, 1842.

State and district.	Name of the officer.	Net receipts.
Maine	John Mussey, clerk district court	$2,215 04
	do. clerk circuit court	986 49
	Augustine Haines, district attorney	1,058 33
	Virgil D. Parris, marshal	1,538 27
New Hampshire	John L. Hays, clerk district court	200 02
	do. clerk circuit court	143 35
	Franklin Pierce, district attorney	341 00
	Cyrus Barton, marshal	371 07
Massachusetts	*Francis Basset, clerk district court from January 1 to August 15	2,302 99
	*S. E. Sprague, clerk district court from August 15 to December 31	1,582 46
	James B. Robb, clerk circuit court	2,356 77
	*Franklin Dexter, district attorney from January 1 to March 29, 1845	1,383 00
	*Robert Rantoul, jr., district attorney from March 29 to December 31, 1845	3,228 21
	*Isaac O. Barnes, marshal	5,938 94
Connecticut	Charles A. Ingersoll, clerk district court	339 61
	do. clerk circuit court	281 31
	J. Stoddard, district attorney	536 20
	Benning Mann, marshal	1,089 69
Rhode Island	John T. Pitman, clerk district court	1,458 75
	do. clerk circuit court	1,232 06
	Walter S. Burgess, district attorney	1,017 04
	Bennington Anthony, marshal	2,217 90
Vermont	Edward H. Prentiss, clerk district court	202 12
	do. clerk circuit court	334 04

*These officers not having as yet made their returns for the year 1846, those of 1845 have been taken here.

State and District.	Name of the officer.	Net receipts.
	Charles Linsley, district attorney	$500 40
	Jacob Kent, jr., marshal	838 59
New York, (northern district)	Anson Little, clerk district court	759 98
	do. clerk circuit court	302 24
	W. F. Allen, district attorney	4,320 21
	Jacob Gould, marshal	7,872 63
New York, (southern district)	James W. Metcalf, clerk district court	5,197 30
	Alexander Gardiner, clerk circuit court	2,057 01
	Benjamin F. Butler, district attorney	6,667 38
	Ely Moore, marshal	5,724 88
New Jersey	Edward N. Dickerson, clerk district court	838 72
	*do. clerk circuit court	436 87
	James S. Green, district attorney	595 96
	Samuel McClung, marshal	711 05
Pennsylvania, (eastern district)	Francis Hopkinson, clerk district court	2,713 52
	do. clerk circuit court from January 1 to November 16	1,734 15
	George Plitt, clerk circuit court from November 16 to December 31	2,013 50
	Thomas M. Pettit, district attorney	2,356 15
	George M. Keim, marshal	1,953 46
Pennsylvania, (western district)	A. A. Irwin, clerk district court	384 65
	Edward J. Roberts, clerk circuit court	517 56
	John L. Dawson, district attorney	970 50
	Samuel Hays, marshal	1,882 76
Delaware	†Thomas B. Roberts, district clerk	283 23
	†do clerk circuit court	29 28
	William H Rodgers, district attorney	286 60
	Alexander Porter, marshal	1,117 37
Maryland	Thomas Spicer, clerk district court	1,624 75
	do. clerk circuit court	1,452 26
	W. L. Marshal, district attorney	1,108 00
	Morran Forrest, marshal	3,145 22
Virginia, (eastern district)	A. A. Cowdery and P. Mayo, clerks district court	612 61
	P. Mayo, clerk circuit court	546 04
	R. C. Nicholas, district attorney	1,144 00
	Edmund Christian, marshal	1,606 89
Virginia, (western district)	R W. Moon, clerk district court from January 1 to March 4	150 11
	Erasmus Stribbling, clerk district court from March 4 to December 31	1,015 79
	R. W. Moon, clerk circuit court	98 67
	George H. Lee, district attorney	1,395 50
	James Points, marshal	3,915 32
North Carolina	John M. Jones, clerk district court	175 86
	William H Haywood, clerk circuit court	498 70
	D. K. McRae, district attorney	380 50
	Wesley Jones, marshal	931 19
South Carolina	Henry Y. Gray, clerk district court	569 52

* The returns of 1847 have been inserted here.

† These amounts embrace only six months' returns.

State and district	Name of the officer.	Net receipts.
	Henry Y. Gray clerk circuit court	$299 09
	Edward McCrady, district attorney	837 44
	Thomas D. Condy, marshal	2,164 17
Georgia	George Glenn, clerk district court	197 64
	do. clerk circuit court	547 31
	Henry A. Jackson, district attorney	383 00
	Henderson Willingham, marshal	1,403 51
Alabama, (northern district)	——— ———, district clerk	. . .
	——— ———, circuit clerk	. . .
	*Joseph A. S. Acklen, district attorney	215 00
	Benjamin Pattison, marshal	1,061 67
Alabama, (southern and middle dist.)	John Fitts, clerk district court	1,032 08
	do. clerk circuit court	1,152 88
	Joseph A. S. Acklen, district attorney, middle district	403 00
	George J. S. Walker, district attorney from January 1 to April 13	144 00
	Alexander B. Meek, district attorney from April 13 to December 31	572 00
	James G. Lyon, marshal	4,044 15
Mississippi, (northern district)	——— ———, clerk district court	. . .
	——— ———, clerk circuit court	. . .
	——— ———, district attorney	. . .
	——— ———, marshal	. . .
Mississippi, (southern district)	——— ———, clerk district court	. . .
	——— ———, clerk circuit court	. . .
	R. M. Gaines district attorney	4,923 2
	Thomas Fletcher, marshal	4,845 71
Louisiana	†N. R. Jennings, clerk district court	2,262 29
	Edmund Randolph, clerk circuit court	3,869 50
	Downs and Durant, district attorneys	7,935 47
	†Robertson and Wagner, marshals	4,851 58
Texas . . . 1847	Thomas Bates, clerk district court	1,960 42
	——— ———, clerk circuit court	. . .
6 months	George William Browne, district attorney	242 60
	James W. Cocke, marshal	1,888 39
East Tennessee	James W. Campbell, clerk district court	154 88
	do. clerk circuit court	92 43
	Thomas C. Lyon, district attorney	280 50
	A. R. Crozier, marshal	400 92
Middle Tennessee	Jacob M. Gavock, clerk district court	919 12
	do. clerk circuit court	1,033 12
	Thomas D. Mosely, district attorney	631 25
1845	B. H. Sheppard, marshal	1,312 94
West Tennessee	James L. Talbot, clerk district court	284 00
	do. clerk circuit court	894 76
	——— ———, district attorney	. . .
	Robert J. Chester, marshal	1,101 62
Kentucky	John H. Hanna, clerk district court	1,406 14
	do. clerk circuit court	802 96

* This amount embraces only six months' returns.

† As no returns have been made for 1846, I have taken those of 1844 in the above.

State and district.	Name of the officer.	Net receipts.
	P. S. Loughborough, district attorney	$422 40
	John Lane, marshal	724 71
Ohio	William Minor, clerk district court	394 36
1845	do. clerk circuit court	1,528 89
	Thomas W. Bartley, district attorney	1,613 00
	Daniel A. Robertson, marshal	6,001 08
Indiana	Horace Bassett, clerk district court	16 00
	do. clerk circuit court	903 47
	Daniel Mace, district attorney	835 80
	A. C. Pepper, marshal	3,789 25
Illinois	William Pope, clerk district court	788 26
	do. clerk circuit court	1,545 13
	Davis L. Gregg, district attorney	2,124 50
	Stinson H. Anderson, marshal	3,067 73
Missouri	Jason Harrison, clerk district court	288 84
	Joseph Gamble, clerk circuit court	979 84
	Thomas T. Gantt, district attorney	705 00
	Robert C. Ewing, marshal	2,588 27
Arkansas	William Field, clerk district court	1,996 02
	do. clerk circuit court	1,096 89
	Samuel H. Hempstead, district attorney	2,174 00
	Elias Rector, marshal	3,996 15
Michigan	John Winder, clerk district court	181 04
	do. clerk circuit court	2,013 88
	John Norvell, district attorney	1,369 45
	Austin E. Wing, marshal	1,705 16
Wisconsin Territory	——— ———, county clerk	12,305 64
	William P. Lynde, district attorney	4,473 43
	J. S. Rockwell, marshal	4,386 58
Iowa Territory	——— ———, county clerks	13,867 52
	Edward Johnson, district attorney	3,496 00
	G. S. Bailey, marshal	3,724 89
Columbia	Cassius F. Lee, clerk district court, 1845	2,650 06
	William Brent, clerk circuit and criminal court	2,506 95
	James Hoban, district attorney, from July 1, 1846, to January 31, 1846	325 47
	Philip Barton Key, district attorney, from January 31 to December 31	5,527 02
	Alexander Hunter, marshal	6,292 61
Florida, 1847	——— ———, district clerks	2,645 18
	——— ———, circuit clerks	. . .
	South Florida district attorney	. . .
1847	C. C. Yonge, district attorney, North Florida	1,526 70
6 months	J. S. Brown, marshal South Florida	2,912 72
	Robert Myers, marshal North Florida	2,242 62

Insolvents in Massachusetts.

Name of Insolvent.	Residense.	Commencement of Proceedings.	Name of Commissioner.
Archer, James P.	Ipswich,	June 14,	John G. King.
Adams, Daniel S.	Charlestown,	" 23,	Asa F. Lawrence.
Bosworth, Pliny	Waltham,	" 13,	Asa F. Lawrence.
Boutelle, Martin D.	Blackstone,	" 12,	Henry Chapin.
Bryant, William H.	Dorchester,	" 7,	Francis Hilliard.
Burrell, Richmond	Weymouth,	" 26,	Francis Hilliard.
Breed, Henry A.	Lynn,	" 26,	John G. King.
Bessey, Marshall	Springfield,	" 30,	George B. Morris.
Currier, John B.	Boston.	" 14,	J. M. Williams.
Crandall, Sorel D.	Hatfield,	" 28,	Myron Lawrence.
Clark, Asa B	Springfield,	" 21,	George B. Morris.
Carr, Asell M.	Lawrence,	" 27,	John G. King.
Doane, Samuel	Whately,	" 12,	D W. Alvord.
Dwinnell, Hiram	Ashburnham,	" 18,	Henry Chapin.
Dickinson, Lewis	Rowley,	" 20,	John G. King
Dwight, Charles H.	Belchertown,	" 4,	Myron Lawrence.
Fogg, Isaac W.	Lawrence,	" 20,	John G. King.
Fuller, Leonard	Boston,	" 14,	J. M. Williams.
Goodrich, David W.	West Springfield,	" 12,	George B. Morris.
Gale, Levi B.	Boston,	" 27,	J. M. Williams.
Hamblin, Nathaniel	Boston,	" 8,	J. M. Williams.
Hutchins, James R.	Boston,	" 1,	J. M. Williams.
Holt, Andrews L.	Millbury,	" 7,	Henry Chapin.
Hamilton, Benjamin	Somerville,	" 7,	Asa F. Lawrence
Hadlock, Colburn	Lexington.	" 11,	Asa F. Lawrence.
Keyes, Leonard	West Boylston,	" 7,	Henry Chapin.
La Forest, ——	Boston,	" 15,	J. M. Williams.
Lunt, Jno. C.	Lynn,	" 26,	John G. King.
Merrill, Jonathan	Methuen,	" 23,	John G. King.
McNulty, Charles	Northfield,	" 23,	D. W. Alvord.
Marston John M. et al.	Roxbury,	" 14,	Francis Hilliard.
Moffitt John H.	Roxbury,	" 20,	Francis Hilliard.
Munroe, Seldon	Marshfield,	" 27,	Welcome Young.
Perkins, John	New Bedford,	" 23,	D. Perkins.
Phelps, Thaddeus	Attleborough,	" 22,	D. Perkins.
Paine, Thomas H. and Paine, Isaiah	Weymouth,	" 19,	Francis Hilliard.
Read, Sheffel	New Bedford,	" 23,	D. Perkins.
Ray, Samuel C.	Springfield,	" 30,	George B. Morris.
Stearns, George N.	Taunton,	" 12,	D. Perkins.
Sanderson, W. W.	Whately.	" 12,	D. W. Alvord.
Swift, Orville	Barnardston,	" 4,	D. W. Alvord.
Tibbets, Luther C.	Boston,	" 11,	J. M. Williams.
Valentine, William J.	Roxbury,	" 20,	Francis Hilliard.
Welch, Oliver	Boston,	" 26,	J. M. Williams.